

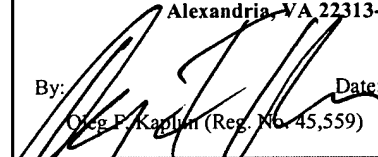
[40116/06501]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Valliani et al.
Serial No. : 09/899,369
Filing Date : July 2, 2001
For : Network for Alliance Marketing

Group Art Unit : 3627
Examiner : James A. Kramer

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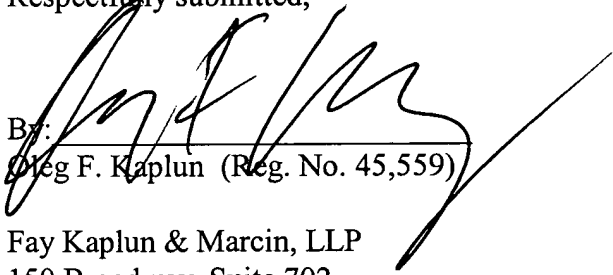
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By: 	Date: July 12, 2005
Greg F. Kaplun (Reg. No. 45,559)	

TRANSMITTAL

In response to the Notice of Non-Compliance mailed on July 6, 2005, enclosed please find a Corrected Appeal Brief (in triplicate) for filing in the above-identified application. No fees are believed to be required. However, the Commissioner is hereby authorized to charge the **Deposit Account of Fay Kaplun & Marcin, LLP No. 50-1492** any additional required fees. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

Dated: July 12, 2005

By: 
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PATENT
Attorney Docket No.: 40116 - 06501

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
)	
Aziz Valliani et al.)	
)	
Serial No.: 09/899,369)	Group Art Unit: 3627
)	
Filed: July 2, 2001)	Examiner: James A. Kramer
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For: NETWORK FOR ALLIANCE)	Board of Patent Appeals and
MARKETING)	Interferences
)	

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed February 18, 2005, and pursuant to 37 C.F.R. § 41.37, Appellants present in triplicate their appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-12 and 15-26 in the final Office Action dated November 15, 2004. The appealed claims are set forth in the attached Claims Appendix.

1. **Real Party in Interest**

This application is assigned to Symbol Technologies, Inc., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences which would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-26 have been rejected in the final Office Action. The Notice of Appeal filed February 18, 2005 indicated Appellants appeal of the rejection of claims 1-26. However, Appellants hereby withdraw the appeal of the rejection of claims 13 and 14. Thus, the appealed claims are 1-12 and 15-26.

4. Status of Amendments

All amendments submitted by the Appellants have been entered.

5. Summary of Claimed Subject Matter

The present invention comprises a system including an alliance marketing network which allows companies to cross-promote each other. (See Specification, ¶ [0014]). The network comprises, for example, a first company and a second company connected to an alliance marketing engine which includes an alliance marketing fund. (Id. at ¶¶ [0014] - [0016]).

In a consumer transaction, the consumer is presented with a discount offer via a first point-of-sale terminal ("POS") at the first company. (Id. at ¶¶ [0015], [0040]). The discount offer

indicates that if the consumer purchases a first product at the first company, he will receive a discount on a second product at the second company. If the customer accepts the discount offer (i.e., purchases the first product), an indication of the acceptance is entered on the first POS terminal and transmitted to the alliance marketing engine. (*Id.* at ¶ [0015]). The alliance marketing engine maintains a record for the consumer storing each accepted discount offer. Thus, when the consumer is recognized at a second POS at the second company, he can redeem the discount (e.g., purchase the second product for a discounted price).

Along with the indication of the acceptance, the alliance marketing engine receives a predetermined dollar amount from the first company and deposits the amount into the alliance marketing fund. (*Id.* at ¶ [0016]). The amount is used to defray a cost of dispensing a discounted product incurred by the second company. For example, the second company receives a predetermined portion of the alliance marketing fund as a result of selling the discounted product. In series with the transaction or at regular intervals, a total amount or a portion of the alliance marketing fund is distributed to participating companies. (*Id.* at ¶ [0016]). Thus, the alliance marketing fund holds amounts contributed by each company participating in the alliance marketing network.

6. Grounds of Rejection to be Reviewed on Appeal

- I. Whether claims 1-12 and 17-26 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,578,012 to Storey (“the Storey patent”) in

view of U.S. Patent No. 6,694,300 to Walker et al. ("the Walker patent").

- II. Whether claims 15 and 16 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,578,012 to Storey ("the Storey patent") in view of U.S. Patent No. 6,694,300 to Walker et al. ("the Walker patent").

7. Argument

- I. The Rejection of Claims 1-12 and 17-26 Under 35 U.S.C. § 103(a) as Being Obvious Over U.S. Patent No. 6,578,012 to Storey in view of U.S. Patent No. 6,694,300 to Walker et al. Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 1-12 and 17-26 under 35 U.S.C. 103(a) as being unpatentable over the Storey patent in view of the Walker patent. (See 11/15/04 Office Action, p. 2). The Storey patent describes an on-line, interactive incentive program. (See the Storey patent, col. 1, ll. 63-65). A user of the program earns award points based on a product purchase, and the award points may be redeemed at one or more merchants which participate in the program. (Id. at col. 7, ll. 47-49; col. 9, ll. 51-61). The Walker patent describes a system for providing supplementary product sales as a function of a purchase parameter at a point-of-sale terminal. (See the Walker patent, Abstract). A central controller accesses and debits/credits one or more merchant-specific accounts based on discounts redeemed by customers. (Id. at col. 8, ll. 42-52).

- B. The Cited Patents Do Not Disclose Calculating and Recording an Amount of Cross-Marketing Revenue Realized From the First Purchase to a Marketing Fund Account in the Database and Allocating at Least a Portion of the Cross-Marketing Revenue in the Fund to Reimburse the Second Company for the Discount as Recited in Claim 1.

The Examiner stated in the Final rejection that the Walker patent discloses the steps of “calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database” and “allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount.” (See 11/15/04 Office Action, pp 2-3). The Examiner reaffirmed this position in the Advisory Action of February 8, 2005. (See 2/8/05 Advisory Action). However, Appellants respectfully submit that neither the Storey patent nor the Walker patent, either alone or in combination, discloses or suggests “calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database” and “allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount,” and therefore, respectfully disagree with the Examiner’s rejection of claim 1.

In the final Office Action, the Examiner recognized that the Storey patent neither discloses nor suggests “calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database” and “allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount,” as recited in claim 1. However, the Examiner further stated that the deficiencies of the Storey patent are cured by

the Walker patent, and that one of ordinary skill in the art would be motivated to combine the teachings contained therein.

The Walker patent describes a system for providing supplementary product sales as a function of a purchase parameter at a point of sale ("POS") terminal. (See the Walker patent, Abstract). A merchant, by registering with a credit card issuer, can provide offers for supplementary products ("upsells") at the POS terminal of other merchants. (Id. at col. 3, ll. 18-39). Thus, when a customer uses the credit card at the POS terminal, a central controller connected thereto transmits an upsell product offer to the POS terminal. (Id. at col. 5, ll. 14-25). The upsell product offer transmitted by the central controller depends upon the purchase parameter (e.g., product purchased, purchase price, date, time of day, etc.). (Id. at col. 5, ll. 40-61). Depending on a type of the upsell product offer and whether the customer accepts it, the central controller may credit/debit one or more financial accounts specific to the merchant, the customer and/or a further merchant (e.g., manufacturer of upsell product). (Id. at col. 8, ll. 42-52).

According to the Walker patent, when the customer indicates acceptance of the upsell product offer, the central controller adjusts financial accounts specific to the customer, the merchant at the POS terminal and/or the merchant of the upsell product. (Id. at col. 8, lines 42-52). Tables 210 (Fig. 8), 220 (Fig. 9) and 230 (Fig. 10) indicate the adjustments (e.g., credit/debit) to accounts identified by specific numbers which are unique to each customer and merchant. Specifically, these accounts may be "credit card account[s] of the customer, the merchant controlling the [POS] terminal,

or a merchant offering the accepted supplementary product.” (*Id.* at Abstract). The funds in these accounts are not intermingled, because there is no affiliation between the merchants. That is, the Walker patent clearly states, “[t]he present invention provides merchants with the ability to make sales through the POS terminals and stores of other merchants, *without registering, associating or affiliating with any of those other merchants.*” (*Id.* at col. 3, lines 7-11) (emphasis supplied). Thus, for each acceptance of an upsell product offer, only entity-specific accounts are adjusted (e.g., one merchant account and one customer account).

In contrast to the Walker patent, the alliance marketing engine of the present invention receives a predetermined dollar amount from each of the companies participating in the alliance marketing network, and stores all of the amounts in a single account, the alliance marketing fund. (*See* Specification, ¶ [0040]. Disbursements are made from the fund to participating companies based on the discount offers redeemed by the customers. In particular, the alliance marketing engine deposits and withdraws amounts from the single alliance marketing fund. Claims 1 specifically recites “calculating and recording an amount of cross-marketing revenue realized from the first purchase to a *marketing fund account in the database*” and “*allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount.*” In contrast, the Walker patent does not disclose any type of central marketing fund. It merely teaches moving amounts between customer- and merchant-specific accounts.

Therefore, it is respectfully submitted that neither the Storey patent nor the Walker

patent, either alone or in combination, discloses or suggests “calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database” and “allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount,” as recited in claim 1. Therefore, Appellants respectfully request that the Board overturn the Examiner’s rejection under 35 U.S.C. § 103(a) of independent claim 1 and all the claims depending directly or indirectly therefrom (claims 2-12).

Similar to claim 1, independent claim 17 recites a method for cross marketing products between a first company and a second company over an interconnected plurality of point-of-sale terminals and a server, wherein the method includes the step of “recording an amount of the cross-marketing revenue realized from at least the first purchase to a *marketing fund account*.” As discussed above with regard to claim 1, neither the Storey patent nor the Walker patent, either alone or in combination discloses “a marketing fund account.” Therefore, Appellants respectfully request that the Board overturn the Examiner’s rejection under 35 U.S.C. § 103(a) of independent claim 17 and all the claims depending directly or indirectly therefrom (claims 18-26).

II. The Rejection of Claims 15 and 16 Under 35 U.S.C. § 103(a) as Being Obvious Over U.S. Patent No. 6,578,012 to Storey in view of U.S. Patent No. 6,694,300 to Walker et al. Should Be Reversed.

A. The Examiner’s Rejection

In the Final Office Action, the Examiner rejected claims 15 and 16 under 35 U.S.C. 103(a) as being unpatentable over the Storey patent in view of the Walker patent. (See 11/15/04 Office Action, p. 2). The Storey patent describes an on-line, interactive incentive program. (See the Storey patent, col. 1, ll. 63-65). A user of the program earns award points based on a product purchase, and the award points may be redeemed at one or more merchants which participate in the program. (Id. at col. 7, ll. 47-49; col. 9, ll. 51-61). The Walker patent describes a system for providing supplementary product sales as a function of a purchase parameter at a point-of-sale terminal. (See the Walker patent, Abstract). A central controller accesses and debits/credits one or more merchant-specific accounts based on discounts redeemed by customers. (Id. at col. 8, ll. 42-52).

B. The Cited Patents Do Not Disclose Cross Marketing Products Between a First Department and a Second Department at a Company Using an Electronic Sales Terminal and a Server as Recited in Claims 15 and 16.

Independent claims 15 and 16 are each directed to “a method for cross marketing products between *a first department and a second department* at a company using an electronic sales terminal and a server.” Appellants respectfully submit that claims 15 and 16 are separately patentable from claims 1-12 and 17-26 discussed above, because those claims are directed to cross-marketing of products between two separate companies. Claims 15 and 16 are directed to cross-marketing between two departments in a same company. Thus, claims 15 and 16 are separately

patentable from the claims described and argued above.

Appellants respectfully submit that neither the Storey patent nor the Walker patent, either alone or in combination, discloses or suggests a method for inter-department cross marketing within a company using point-of-sale terminals at different departments within the company. The Storey patent is directed to an on-line award program which administers incentive programs for multiple companies. (See the Storey patent, col. 4, lines 1-16). The Walker patent teaches a system for providing supplementary product sales which is administered by a central controller that each merchant must register with to participate therein. (See the Walker patent, col. 3, lines 7-30). Thus, neither the Storey patent nor the Walker patent discloses or suggests a method for intra-company marketing (i.e., between departments within the same company). The Examiner cannot point to any disclosure in either the Storey patent or the Walker patent that would suggest otherwise. Therefore, the Storey patent and the Walker patent, either alone or in combination, do not disclose or suggest “a method for cross marketing products between *a first department and a second department* at a company using an electronic sales terminal and a server,” as recited in claims 15 and 16.

Claim 16 further includes the step of “depositing a predetermined amount of money into an account maintained on the server for the benefit of the second department in at least partial compensation for accepting the discount.” The account in claim 16 is similar to the alliance marketing fund discussed above with reference to claim 1. However the account in claim 16 intermingles funds from different departments within the same company, whereas the alliance marketing fund intermingles

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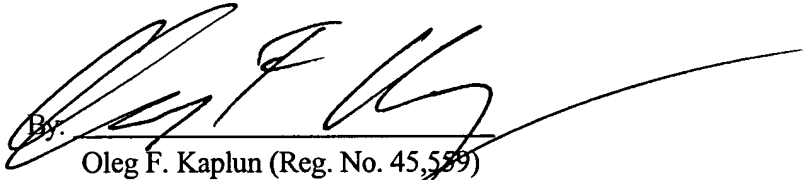
funds from different companies. Neither the Storey patent nor the Walker patent discloses such an account which contains intermingled funds from different departments within the same company. Thus, Appellants respectfully request that the Board overturn the Examiner's rejection under 35 U.S.C. § 103(a) of independent claims 15 and 16.

8. Conclusions

For the reasons set forth above, Appellants respectfully request that the Board reverse the final rejections of the claims by the Examiner under 35 U.S.C. § 103(a) and indicate that claims 1-12 and 15-26 are allowable.

Respectfully submitted,

Date: July 12, 2005

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CLAIMS APPENDIX

1. A method for cross marketing products between a first company and a second company over an interconnected plurality of point-of-sale terminals and a server, the method comprising the steps of:

identifying the purchase of the first product of a first company by a particular consumer at a first point-of-sale terminal and storing an indication of the purchase of the first product in a database on the server;

at the first company, conditioning the grant of a discount for a second product at a second company on the purchase of the first product at the first company; and

at the second company, offering for sale the second product if the particular consumer makes a purchase of the first product;

at the second company, querying the database to determine if the particular consumer has purchased the first product and standing ready to accept the discount on the second product;

calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database; and

allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount.

2. The method of claim 1, wherein the step of conditionally granting a discount comprises:

at a first company, conditioning the grant of a 100% discount for a second product at a second company on the purchase of a first product at the first company.

3. The method of claim 1, wherein the step of conditionally granting a discount comprises:

at a first company, conditioning the grant of a less-than-100% discount for a second product at a second company on the purchase of a first product at the first company.

4. The method of claim 1, further comprising the steps of:

recognizing the purchase of the first product at the first company by a consumer; and
crediting an account of the consumer with the discount.

5. The method of claim 3, further comprising the step of :
notifying the consumer of the discount.
6. The method of claim 1, further comprising the steps of:
recognizing the purchase of the first product at the first company and the grant of a discount;
and
in response, depositing a predetermined amount of property in the account.
7. The method of claim 6, wherein the step of depositing comprises:
depositing a predetermined percentage of revenue realized from the purchase of the first
product.
8. The method of claim 6, wherein the step of depositing comprises:
depositing money.
9. The method of claim 6, wherein the step of depositing comprises:
depositing a predetermined amount of property into an account for the benefit of the second
company.
10. The method of claim 6, wherein the step of depositing comprises:
depositing a predetermined amount of property into an account for the benefit of the second
company in at least partial compensation for accepting the discount.

11. The method of claim 1, further comprising the step of:

at the second company, selling the second product, accepting the discount on the second product.

12. The method of claim 10, further comprising the steps of:

at a third company, conditioning the grant of a second discount for the second product at the second company on the purchase of a third product at the third company; and

at the second company, standing ready to accept the second discount on the second product, wherein the step of selling comprises accepting the discount and the second discount on the second product.

15. A method for cross marketing products between a first department and a second department at a company using an electronic sales terminal and a server storing a database and coupled by an electronic communications link, the method comprising the steps of:

at a company, identifying the purchase of the first product of the first department by a particular consumer at an electronic sales terminal and storing an indication of the purchase of the first product in the database on the server;

at the second department, querying the database to determine if the particular consumer has purchased the first product of the first product, and conditioning the grant of a discount at one of a plurality of sales terminals for the second product at the second department within the company on a purchase at the same or a different one of the plurality of sales terminals of a first product at a first department within the company; and

at the second department, offering for sale the second product and standing ready to accept the discount at the same or a different one of the plurality of sales terminals on the second product.

16. A method for cross marketing products between a first department and a second department at a

company using an electronic sales terminal and a server coupled by an electronic communications link, the method comprising the steps of:

at a company, conditioning the grant of a discount at one of a plurality of sales terminals for a second product at a second department within the company on a purchase at the same or a different one of the plurality of sales terminals of a first product at a first department of the company;

recognizing the purchase of the first product at the first department by a consumer and the grant of a discount;

crediting an account of the consumer maintained on the server with the discount;

notifying the consumer of the discount;

depositing a predetermined amount of money into an account maintained on the server for the benefit of the second department in at least partial compensation for accepting the discount; and

at the second department, offering for sale the second product and standing ready to accept the discount at the same or a different one of the plurality of sales terminals on the second product, wherein the money deposited into the account for the benefit of the second department amounts to a predetermined percentage of revenue realized from the purchase of the first product.

17. A method for cross marketing products between a first company and a second company over an interconnected plurality of point-of-sale terminals and a server, the method comprising the steps of:

at a first company, conditioning the grant of a promotional discount value for a second product at a second company on a purchase of a first product at the first company; and

at the second company, offering for sale the second product and standing ready to accept the promotional discount value on the second product;

the method further including:

identifying the purchase of the first product by a particular consumer at a first point-of-sale terminal;

sending first purchase data identifying at least the first product from the point-of-sale terminal in

substantially real-time to the server;

comparing the first purchase with qualifying cross-marketing purchases, and if the first purchase includes at least one qualifying first company cross-marketing product, then: (i) awarding the promotional discount value associated with that first purchase to an account identified with the particular consumer, and (ii) transferring an indication of the awarded promotional discount value back to the first point-of-sale terminal and printing the indication of the promotional discount value on a receipt issued to the consumer at the first point-of-sale terminal for that purchase; and

recording an amount of the cross-marketing revenue realized from at least the first purchase to a marketing fund account.

18. The method in claim 17, wherein the marketing fund account is structured to defray the second company's costs in dispensing products in conjunction with a promotional value earned by the purchase of the first company's products, and the first company's costs in dispensing the products in conjunction with a promotional value earned by the purchase of the second company's products.

19. The method in claim 17, wherein the server further includes a marketing engine.

20. The method in claim 17, further comprising:

identifying the purchase of a second product by the particular customer from the second company at a second point-of-sale terminal;

sending second purchase data identifying at least the second product from the second point of sale terminal in substantially real-time to the server;

comparing the particular customer account stored promotional value with a required promotion value redemption threshold on the server; and

if the consumer account stored promotional value is high enough to permit redemption of a promotion, then permitting the consumer to redeem a promotion based on their promotion value for the

second company product.

21. The method in claim 17, wherein the promotional value comprises a number of award points.

22. The method in claim 17, wherein the amount recorded into the marketing fund comprises a percentage of the revenue realized from the first purchase.

23. The method as in claim 17, further including receiving an consumer account inquiry from a consumer at a point-of-sale terminal at the store of a company participating in the cross-marketing.

24. The method as in claim 17, further comprising receiving a consumer's unique identification number at the beginning of a sales transaction or an account inquiry transaction.

25. The method as in claim 17, wherein the server is an in-store server.

26. The method as in claim 17, wherein the server comprises an out-of-store external server.

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EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

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RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.